Mr Campbell

1½ Pro.

address lawful come
Tuesday May 7.

Campbell

Cancelled
not inconsistent with the
usual remedies.

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To the Honorable the Judges of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, of April Session, 1855.

Shepherd Knapp, Alfred S. Frazer and Daniel S. Miller, citizens of the State of New York, and trustees named in a certain Indenture of Mortgage, dated the first day of May, A. D. 18_2, recorded at West Chester, in the State of Pennsylvania, in Mortgage Book 12, Vol. 33, page 44, &c., bring this, their bill of complaint against "The Chester Valley Railroad Company," a corporation created and established by the Commonwealth of Pennsylvania, and having their chief place of business therein, and against George G. Thomas, the President, and Joseph W. Ryerss, Richard M. Thomas, George W. Carpenter, C. D'Invilliers, Aaron Conrad, William G. Alexander and George L. Buzby, managers of the said Company, all of them being citizens of the said State of Pennsylvania. And thereupon, your orators, Shepherd Knapp, Alfred S. Frazer and Daniel S. Miller, trustees for the persons and uses mentioned and contained in the aforesaid Indenture of mortgage made between "The Chester Valley Railroad Company," of the first part, and your orators, of the second part, complain and say:

That the said "The Chester Valley Railroad Company" was duly incorporated, by an Act of the General Assembly of the Commonwealth of Pennsylvania,

passed the twenty-second day of April, A. D. 1850, as in and by said Act, to which reference is craved, will fully and at large appear.

That, in pursuance of the powers, rights and privileges conferred thereby, and by subsequent acts of the General Assembly of the Commonwealth of Pennsylvania, supplemental thereto, to which reference is craved, the said Chester Valley Railroad Company proceeded to lay down and construct their said railroad, from its connection with the Philadelphia and Columbia Railroad, at or near Downington, Chester County, to the terminus, near the borough of Norristown, Montgomery County, in said State of Pennsylvania, and have completed the same.

That the said The Chester Valley Railroad Company, in pursuance of the aforesaid rights, powers and privileges, and especially under and by virtue of an Act of the General Assembly of the Commonwealth of Pennsylvania, passed the 24th day of February, A. D. 1852, and to enable the said Company to complete and construct their said railroad and works, and to supply the necessary engines, cars, machinery, tools, and appurtenances therefore executed, issued and delivered to divers persons, bonds for the payment of various sums of money, in all five hundred thousand dollars, the principal thereof payable on the first day of May, A. D. 1872, and the interest thereon, at the rate of seven per cent. per annum, payable semi-annually, on the first day of May and the first day of November, in each year.

That, in pursuance of the powers, rights and privileges aforesaid, and to secure the faithful payment of the said bonds, with the interest thereon, from time

to time, as the same became due and payable, the said Company, on the first day of May, A. D. 1852, made, executed and delivered to your orators, a certain Indenture of mortgage, bearing date the day and year last-mentioned, a copy whereof is hereunto annexed, marked *A*, which your orators pray may be taken as though fully herein set forth as part of this, their bill.

That the trust therein declared was by your orators duly accepted.

That the said Company have not paid the interest upon said bonds due and payable on the first day of May and the first day of November, A. D. 1854, although the same was duly demanded, and more than sixty days have elapsed since such demand and refusal to pay the same, prior to the request hereinafter next mentioned, and divers suits have been commenced and judgments have been obtained thereon more than sixty days before said request by divers persons for the amount of interest due and payable and unpaid on certain of said bonds, to the record of which suits your orators crave leave to refer.

That, on the twelfth day of March, 1855, and since your orators have been requested, by holders of certain of said bonds, the interest upon which has been so unpaid and demanded, and whereon suits have been brought, and judgments obtained as aforesaid, to enter into and upon and take possession of the premises in said Indenture of mortgage, granted to your orators, in pursuance of the powers and according to the terms therein mentioned.

That, accordingly, your orators, trustees as aforesaid, have repeatedly applied to and requested the said Company to deliver to them the possession of

the said premises, to be held by them for the purposes and upon the trusts by said Indenture of mortgage, provided and declared, but the said Company have wholly failed and neglected so to do, and entirely disregarded their repeated applications in that behalf, and continue to use, or suffer to be used, by their agents or contractors, the said railroad and premises in said mortgage mentioned, and to keep the same and every part thereof in their possession and under their control, and to receive the earnings and profits thereof, in disregard of the rights of your orators, and their cestuis que trust.

In consideration whereof, and forasmuch as your orators are remediless in the premises, except in a court of equity, where matters of this kind are properly cognizable and relievable, to the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, that the said The Chester Valley Railroad Company, under its corporate seal, and the said George G. Thomas, President thereof, and Joseph W. Ryerss, Richard M. Thomas, George W. Carpenter, C. D'Invilliers, Aaron Conrad, William G. Alexander and George L. Buzby, Managers of said Company, upon their several and respective corporal oaths may, according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by note hereunder written, they are respectively required to answer, that is to say:

First. Whether the said Company constructed and

completed their railroad between the limits, and as stated in the foregoing bill?

Second. Whether the said Company executed, issued and delivered, to any persons, any bonds, as in said bill stated—to what amount, and for what purposes?

Third. Whether the said Company made, executed and delivered, to the complainants, a mortgage, dated the first day of May, A. D. 1852, as in said bill set forth, and whether the exhibit, marked *A*, to this bill annexed, is a true copy thereof, and, if not, annex a true copy thereof.

Fourth. Whether the complainants accepted the said trust, as in said bill stated?

Fifth. Whether any, and what, amount of interest upon any, and which, of said bonds was due and payable, and unpaid, on the first day of May, A. D. 1854, and upon the first day of November, A. D., 1854, respectively, and whether the same, or any, and what part thereof has since been paid, whether the said Company was requested to pay the same or any and what parts thereof, and when; whether any and what suits have been commenced, or judgments obtained, against said Company, for any of such due and unpaid interest, and if aye, annex to your answers hereto copies of the records thereof.

Sixth. Whether your orators have requested the said Company to deliver to them possession of the said premises, as and for the purposes in said bill set forth, and whether the said Company have so done, and, if not, why not.

And that the said defendants may be decreed by your Honors, to surrender and deliver over to your orators possession of the whole of the said railroad, from its connection with the Philadelphia and Columbia Railroad, at or near Downingtown, in Chester County, to its terminus, near the Borough of Norristown, in Montgomery County, and all the corporate rights, tolls, franchises and privileges, thereto belonging, together with the lands, depots, and depot-grounds, locomotive engine, cars, and all other real and personal property of the said Company, mentioned in the said mortgage, and all other real and personal estate acquired since the date thereof, together with all the deeds, evidences, books and writings in their possession, or power relating thereto, or any part thereof. And that the said defendants, their agents and servants, may be restrained by an injunction issuing out of and under the seal of this honorable Court, from using or employing, or in any wise intermeddling with, the said railroad, and appurtenances and lands, depots and depot-grounds, and franchises, and from receiving the tolls, rents, issues and profits thereof. And that some proper person may be appointed receiver of the said railroad and appurtenances, lands, depots and depot-grounds, franchises and property aforesaid, with full power to use and employ the same, and collect, get, or receive the tolls, rents, issues and profits thereof, under the direction of this Honorable Court. And that the terms and provisions of the said Indenture of Mortgage may be specifically performed by the said Company, and all acts and conveyances needful therefor be executed and performed by said defendants. And that the said defendants may account with your orators for, and pay

over to them, all the income derived from the aforesaid premises; and that your orators may have such other and further relief as the nature of the case may require, and to your Honors shall seem meet and agreeable to equity.

May it please your Honors to grant unto your orators, not only your most gracious writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said defendants, conformable to the prayer of this bill, but also a writ of subpœna, to be directed to the said defendants, thereby commanding them, at a day certain, and under a certain pain therein to be inserted, to be and appear before this Honorable Court, then and there to answer the premises, and further to stand to, perform and abide by such further order, direction and decree therein as to your Honors shall seem meet.

And your orators will ever pray, &c.

SHEPHERD KNAPP,
(Signed.) DANIEL S. MILLER,
A. S. FRASER.

(Signed.)
ST. GEORGE T. CAMPBELL,
For Compl'ts.

May 10, 1855.

The defendants, and each of them, are required to answer the interrogatories from Number 1—6, inclusive.

ST. GEORGE T. CAMPBELL,
For Compl'ts.

And now this 22d day of June, 1855, it is ordered by the Court, That the defendants upon the eighth day of each month file, with the clerk of the Court, an account in detail of the earnings and expenses of running the railroad of defendants, and pay into Court, to the credit of this cause, the amount of the money received from the use of the road, deducting therefrom only the expenses paid for running the same, including the pay of a secretary and treasurer (at a salary of three hundred dollars per annum), but excluding any other charge whatever, with leave to either party to move for the modification of this order and for further directions. And that the said sums so received, after deducting the reasonable legal expenses of the trustees in this proceeding, be deposited by the clerk in the office of The Pennsylvania Company for insurances upon lives and granting annuities at the accustomed rate of interest, to await the further order of the Court.

And it is further ordered, that the hearing of the motion for special injunction and receiver be postponed until the further order of the Court.

J. K. KANE.

22 *June*, 1855.

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania.

SHEPHERD KNAPP, *et al.*, *vs.* THE CHESTER VALLEY RAILROAD *et al.*	April Ses's, 1855. No. 8.

The demurrer and answer of The Chester Valley Railroad Company, one of the defendants to the bill of complaint of Shepherd Knapp, Alfred S. Frazer and Daniel S. Miller, complainants.

The defendants by protestation not confessing or acknowledging all or any of the matters and things in the said complainants' bill contained, to be true in such manner and form as the same are therein set forth and alleged, do demur in law to the said bill, and for cause of demurrer show that the said complainants have not in and by their said bill made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for, from or against these defendants. Wherefore, they pray to be hence dismissed with their reasonable costs in this behalf sustained.

These defendants now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception, which can or may be had to the many errors, uncertainties and other imperfections in the said complainants' said bill of complaint contained: for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants answering, say:

That the defendants are a corporation, duly incorporated by an Act of Assembly of Pennsylvania, approved April 22d, 1850, and that by virtue of the said Act and of the several supplements thereto, they constructed and are the owners of a line of railway of between twenty-one and twenty-two miles in length, extending from Downington in Chester county to Bridgeport in Montgomery county, together with the lands and depots necessary for the use of the same, which said line of railway is now completed, in good order and in public use under a contract with the Philadelphia and Reading Railroad Company, a copy of which contract is hereto annexed marked A., which the defendants pray may be taken and considered as a part of their answer.

That the said defendants did, to enable them to complete and construct the said railroad, execute, issue and deliver to divers persons bonds for the payment of various sums of money, in all, $500,000, the principal thereof being payable on the 1st day of May, 1872, and the interest semi-annually, as stated in the bill of complaint; but these defendants aver that the Act of Assembly of February 24th, A. D., 1852, referred to in said bill of complaint, only authorizes the issue of bonds, payable in the year 1870, and that no other Act of Assembly, to the best of your defendant's knowledge, information or belief, authorizes the issue of bonds secured by mortgage of the property or franchises of the Company.

The defendants admit that, to secure the payment of said bonds and the interest thereon, they executed on the first day of May, 1852, and delivered to the complainants an indenture of mortgage of which

they believe Exhibit "A." annexed to said bill, to be a correct copy, but pray for greater certainty, if necessary, that the original may be produced, and they believe that the trust therein declared was accepted by the complainants.

The defendants admit that the interest upon the said bonds, due November 1st, 1854, has not been paid, but they aver that since the filing of the bill of complaint the interest due on May 1, 1854, has been paid out of the receipts of said road under an order of this Honorable Court, and that there is now sufficient cash on deposit, under the order of this Honorable Court, and awaiting its order for distribution, to pay the interest due on said bonds on the 1st of November, 1854, and the 1st of May, 1855.

The defendants have no knowledge or information of unpaid judgments for interest against them, nor do they mean to deny that such may exist, nor have they any knowledge, information or belief that requests have been made, by bondholders to complainants, to enter into and upon and to take possession of the premises in said mortgages mentioned.

The said defendants, to the best of their knowledge, information and belief, deny that the complainants have repeatedly or at any time applied to or requested the said Company to deliver to them the premises to be held for the purposes and trusts of said mortgage.

To the several interrogatories propounded by the said complainants in their said bill of complaint these defendants answer as follows:

To the First Interrogatory. That the defendants constructed and completed said railroad between the limits and as stated in the bill.

To the Second Interrogatory. That the defendants executed, issued and delivered to sundry persons bonds to the amount of $500,000, for the purpose of completing and constructing their said railroad.

To the Third Interrogatory. That the said defendants made, executed and delivered to the complainants a mortgage dated the 1st day of May, 1852, and they believe Exhibit "A." to be a true copy thereof, but for greater certainty refer to the original, which they suppose to be in the possession of the complainants.

To the Fourth Interrogatory. That the said defendants believe that the said complainants accepted the trusts under said mortgage.

To the Fifth Interrogatory. That six months interest upon said bonds was due and payable and unpaid on the 1st day of May, 1854, and on the 1st day of November, 1854; that the interest due May 1st, 1854, has been since paid in manner hereinafter stated, and that funds of the Company are now on deposit, under the order and control of this Honorable Court, sufficient to pay the arrearages of interest due November 1st, 1854, and May 1st, 1855. They presume that the Company was requested from time to time, by the bond holders, to pay the interest due on said bonds, but they cannot specify what particular demands were made, or when they were made. The defendants do not know and cannot answer, either from their knowledge, remembrance or belief, whether any suits were commenced or judgments obtained against said Company for any of such arrearages of interest.

To the Sixth Interrogatory. The defendants do

not know nor do they believe that the complainants ever requested the Company to deliver into their possession the said premises, to wit, the railroad and its franchises under the said mortgage, but to the contrary thereof, the possession and management of the said road have, by the consent and agreement of the complainants, remained in the defendants under an order or decree of this Honorable Court made on the 22d day of June, 1855, in this case as appears by the records of this case.

Without this there is any other matter, cause or thing in the said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

I certify that, in my opinion, the foregoing demurrer is well founded in point of law.

CHARLES GILPIN,
for C. V R. R. Co.

John F. Gilpin, president of the Chester Valley Railroad Company, defendants, being affirmed, saith, that the facts set forth in the foregoing answer, as far as they are stated to depend on the knowledge of the defendants, are just and true, and so far as they are

stated to depend on the knowledge and information of others he believes them to be true, and this affirmant further saith that the foregoing demurrer is not interposed for delay.

JOHN F. GILPIN.

Affirmed and subscribed before
me this 6th day of Sept.,
A. D. 1860.

JAMES MCCAHEN,
Alderman.

Affirmed to and subscribed before
me this 7th day of September,
A. D. 1860.

CHAS. HAZLETT,
U. S. Com'r.

KNAPP et al.
vs.
THE CHESTER VALLEY RAILROAD COMPANY.

And now October 17, 1860, on motion of St. George T. Campbell, for complainants, leave is given to amend complainants' bill in this cause, as follows:

By adding after the names of the complainants now in said bill mentioned, the persons next named and in the form following.

"Paris Fletcher, a citizen of the State of Vermont, "A. H. Griswold, O. A. Burton, William C. Langley, "Philip Datu, John Acosta; the last five named

"being all citizens of the State of New York, holders "of bonds secured by said mortgage dated the first "day of May, A. D. 185 , (executed and delivered "by The Chester Valley Railroad Company to Shep-"herd Knapp, Daniel S. Miller and Alfred S. Fraser, "complainants,) and in this behalf as well for them-"selves as for all other holders of bonds so secured "who (without impairing or affecting the jurisdiction "of this Court) and agreeing to contribute to the "expenses of this suit may become parties with them "herein."

By inserting after the words "in disregard of the "rights of your orators and their *cestui que trusts*," the following: "That the complainants next named "are holders of bonds secured by said mortgage, as "follows:

Paris Fletcher, of Vermont, . . .	$5,000
A. H. Griswold, of New York State, . .	9,000
O. A. Burton, of New York City, . .	5,000
William C. Langley, " " . . .	9,000
Philip Datu, " " . .	32,000
John Acosta, " " . . .	36,000

"And that the interest on each and all of the said "bonds due and payable as thereby provided is in "arrear, although duly demanded as herein stated, "the last payment thereof being for the interest due "May 1, 1854, in pursuance of the order and decree "of this Honorable Court."

That the complainants, holders of bonds as aforesaid, have no contest with, and claim no priorty over,

other holders of the bonds secured by the mortgage aforesaid, and submit, that they, in consequence of the number of the holders of the said bonds, and the inconvenience and impossibility of designating the whole of the holders of said bonds, and of questions with respect to the jurisdiction of this Court, sufficiently represent the class of holders of the said bonds secured by the said mortgage.

KNAPP et al. *vs.* THE CHESTER VALLEY RAILROAD COMPANY.	C. C. U. S., East. Dist. April 8, 1855., 8.

And now October 25th, 1860, this cause came on to be heard on bill and answer and was argued by counsel and considered by the Court. It is ordered, adjudged and decreed:

That the mortgage in the bill mentioned is a valid lien and charge upon the road and property of the corporation defendants therein mentioned and referred to, and upon the franchises thereof. That default has been made in the payment of the interest due upon the bonds secured by said mortgage as in the bill is charged. That the trustees complainants are of right entitled to enter upon and take possession of the railroad and property in the said mortgage mentioned, and to take the same into their custody and keeping and control, and are entitled to take, receive and hold upon and for the purposes of the trust in the said mortgage declared, all the rents, tolls, income and profits thereof whatsoever from all persons in any

manner using the same, whether by contract, lease or otherwise, and to use and apply the same in accordance with the terms by the said mortgage declared.

That a writ of injunction do issue against the defendants, their agents and servants, restraining them and each of them from interfering or intermeddling in any manner whatsoever with the said premises in the said mortgage mentioned, or with the rents, issues and profits thereof, or with their use, control and management thereof, or with the receipt of the rents, issues and profits thereof by the complainants' trustees aforesaid.

This decree is made without prejudice to any question as to the right of the complainants or any other party to have the said mortgage foreclosed, or a sale had under the same, until the maturity of the bonds in the said mortgage mentioned, and that either of the parties have leave, from time to time, to apply for further orders and instructions.

KNAPP *vs.* THE CHESTER VALLEY RAILROAD COMPANY.	C. C. U. S., E. D. of Penna. April Sessions, 1855. No. 8. In Equity.

The complainants in the original bill named, and the complainants whose names were inserted by amendment under the order of this Court, crave leave to file their supplemental bill in the nature of a bill of review, and to amend their original and amended bill filed in this cause as follows:

And that they may have leave to strike out from

the record the names of the parties who as managers of the road are made defendants, and to insert therein the name of John F. Gilpin, a citizen of the State of Pennsylvania, who is now the president of the corporation defendants, styled The Chester Valley Railroad Company, and to add the name of The Philadelphia and Reading Railroad Company as a party defendant, the said company being a corporation created by the Commonwealth of Pennsylvania, and having its place of business within the said Eastern District.

And your orators respectfully show unto your Honors that the said Shepherd Knapp, Alfred S. Frazer, and Daniel S. Miller, citizens of the State of New York, filed their bill in this Honorable Court on the 14th day of May, 1855, against The Chester Valley Railroad Company, a corporation established by the Commonwealth of Pennsylvania, and having their chief place of business therein, and against the then president and managers of the said road, all of them being citizens of the said State of Pennsylvania, and that answers were duly filed in the said cause.

And your orators, by way of supplement, respectfully show unto your Honors, that since the filing of the said bill, a decree has been made in the cause whereby the validity of the mortgage mentioned in the bill was declared and established. And it was declared that default had been made in the payment of the interest on the bonds thereby secured in the bill averred to be due and unpaid. And that the said trustees complainants are entitled to take possession of the said road, and to receive the rents, tolls, income, and profits of the said road, and to apply the same in accordance with the terms of the said mort-

gage. And that liberty was thereby given to apply from time to time for further orders.

And your orators further show that in the month of November, 1854, there became due a semi-annual instalment of interest on the bonds secured by the said mortgage, amounting to $17,500; and that on the first days of May and November, during each succeeding year, there has become due and in arrear a like sum of $17,500; and that the total amount of interest thus due up to and on the first of November, 1860, was $122,500.

That during the same period, the total earnings of or receipts from the road, which, subject to various deductions for costs and expenses of administering the trust contained in the mortgage, have accrued and can be applicable to the payment of said interest, has not exceeded $53,500, leaving due, unpaid, and unprovided for, saving by the property mortgaged, not less than $69,000, for interest alone, independent of and beside the accruing interest and the principal debt.

That these profits or earnings were derived under leases of the road to other corporations whose road connect therewith, and that the net returns received by or payable to The Chester Valley Railroad Company have been as is in the schedule hereunto [hereinafter] annexed, set forth.

They further aver that the said corporation, owners of the road, have no other funds or property than the mortgaged property and franchises, and that they are without credit and wholly unable to borrow money; nor have they any rolling stock or means to procure it, to work the road; and, that in its present condition, no use can, for want of such means, be made of the

road, other than to lease the same to one or more railroad companies whose roads connect therewith and can work the same.

That this plan has been resorted to as the only practicable expedient for obtaining any returns from the property while it continues to be held, either by the corporation or the said trustees under the mortgage; and that said road is now leased to the Reading Railroad Company under a lease which will expire on the 31st day of December, 1864, and was made on the 17th December, 1858.

That the result of the experience of six and five-sixths years has been that the average returns from the road applicable to the mortgage debt is $8,482 $\frac{22}{100}$ per annum, or less than one-half the accruing interest; the several annual returns or income beyond working expenses, of which an account or statement has been made and is on file in this Court among the records of this cause, being as follows:

For the year	1854,	the net receipts	were	$2,281 81
" "	1855,	"	"	4,374 78
" "	1856,	"	"	9,260 35
" "	1857,	"	"	7,675 55
" "	1858,	"	"	13,526 02
" "	1859,	"	"	12,540 30
" "	1860,	" to Oct. inclusive,		10,505 73

The deductions to be made from these sums, independent of the expenses and charges of the trustees and counsel fees, leaves not more than $53,500, which up to this time is applicable to the interest accrued during the same period.

That to continue this system will be disastrous and

most unjust to the bondholders, the *cestuis que trust* under the mortgage, inasmuch as they are thereby losing what they of right ought to have, the possession and use of and compensation for the amount due and payable to them for interest now overdue; and the corporation has and will continue to obtain and have the benefit of a credit for the unpaid interest on the bonds from the times when the same accrued without any compensation and contrary to their express contract to pay the same.

That said company is wholly insolvent and that no means exist for compelling the payment of said interest other than the mortgaged premises, property and franchises.

And your orators aver, that by the contract set forth in the mortgage, the said premises, property and franchises are expressly conveyed on mortgage, to secure the payment of the interest, as well as the principal debt, at certain specified days and times; and that the days and times fixed for the payment of that part of the debt which has accrued under the name of interest have long since past.

That by reason thereof, the legal estate of the corporation in the said mortgaged premises, property and franchises has been forfeited and has vested absolutely in the said trustees complainants, and there remains in the corporation no more than a mere equity of redemption.

That your orators have a present and immediate right to have said equity of redemption foreclosed or sold and the proceeds applied to the payment of the overdue debt of the company to the trustees and their *cestuis que trust*, the bondholders.

That there is no adequate remedy at law to obtain this right, inasmuch as the franchises of the company, which are inseparable from the residue of the mortgaged premises and without which that is valueless and cannot be used, cannot be seized and sold under any proceeding at law by the said bondholders or trustees, but can only be sold under a decree of a Court of Equity in a proceeding upon the mortgage.

But the said defendants at times pretend that the contract set forth in the mortgage has, by conferring a power of sale after the maturity of the bonds, excluded the bondholders and their trustees from any right to have the mortgaged premises sold at any other period; whereas your orators charge that the said power was but a cumulative remedy to those which exist by law, either in courts of law or equity, upon such contracts, and it was the intent of the contract to increase the facility for compelling the payment of the debt secured thereby, and was not designed to take from the complainants any right which by law or in equity attached to the contract for enforcing compliance with the same.

At other times they pretend that by the law of the Commonwealth of Pennsylvania, the right to have a sale, under judicial proceedings, of mortgaged premises, can only be exercised or enforced in a proceeding by *scire facias* after the lapse of one year after all the principal debt has become payable; whereas your orators charge, that although by the law of this State such a remedy is given in the courts of law, there is no exclusion of any proceeding in equity, and that said remedy was cumulative and provided for the purpose of affording a remedy at

law for selling the equity of redemption, and not with the intent of restricting any other remedy which might exist in courts having chancery powers and jurisdiction.

To the end therefore that the said defendants may answer the premises, and more especially that they may answer and say:

1. Whether any and what amount is due for interest on the said bonds secured by and recited in the said mortgage, and at what times the same accrued, and whether there is not due for interest accrued on the

1st Nov., 1854,	$17,500,	1st May, 1858,	$17,500,
May, 1855,	17,500,	Nov., 1858,	17,500,
Nov., 1855,	17,500,	May, 1859,	17,500,
May, 1856,	17,500,	Nov., 1859,	17,500,
Nov., 1856,	17,500,	May, 1860,	17,500,
May, 1857,	17,500,	Nov., 1860,	17,500,
Nov., 1857,	17,500,		

and if not, how much thereof has been paid, and when and how?

2. Whether the net earnings of the road, during these periods, which can be or has been applied to pay this interest, have exceeded $53,500, and whether there are any funds or property, saving these and the mortgaged premises, with which the same can be paid, and if so, what are they?

3. Whether any other and what use, for the purpose of realizing a profit for the mortgage creditors, can be made of the road in its present condition and

ownership, other than to lease it to some other railroad corporation whose road connects therewith, for the purpose of being run or worked by said lessee ?

4. Whether the defendants can find and give security that the interest on the bonds will be paid in full before the time arrives for the payment of the principal of the mortgage debt, or within any and what period ?

And that the said defendants may answer the premises, and that the amount due on the bonds for interest thereon and payable may be ascertained and declared—and your Honorable Court will be pleased to declare the estate and title of the said corporation, the mortgaged premises, property and franchises to be forfeited by the non-performance of the conditions and covenants to pay the said interest at the days and times now past, and that on non-payment thereof by the corporation at a day to be named, that the said mortgaged estate, premises, property and franchises may be sold under the direction of this Court, at such time, on such terms, and in such manner as to the Court shall seem meet; and that the proceeds may be distributed under the directions of this Court among the parties entitled under the said mortgage; and that your orators may have such further and other relief as to your Honors in the premises shall seem meet.

May it please your Honors to grant unto your orators the writ of *subpœna*, to be directed to the said defendants, thereby commanding them at a certain

day and under a certain pain therein to be limited, personally to be and appear before your Honors in your Honorable Court, and then and there full, true, direct and perfect answers make to all and singular the premises, and further to stand, perform and abide such further order, direction and decree therein as to your Honors shall seem meet.

And your orators will ever pray, &c.

The defendants, except the Reading Railroad Company, are required to answer all the interrogatories from 1 to 4 inclusive.

EXHIBIT "A."

Mortgage.

This Indenture, made the first day of May, in the year of our Lord one thousand eight hundred and fifty-two, between the Chester Valley Railroad Company, of the first part, and Shepherd Knapp, Alfred S. Frazer, and Daniel S. Miller, of the second part, witnesseth: Whereas, the Chester Valley Railroad Company, in pursuance of the powers, rights, and privileges, conferred by the Act incorporating said Company, and subsequent Acts of the Legislature of the Commonwealth of Pennsylvania, and all and every other right, privilege and authority, and that behalf enabling the said party of the first part to complete and construct their railroad, enlarge, perfect, and extend the works, provide locomotives, cars, machinery, depots, and land therefor, have authorized their Presi-

dent and Secretary to execute, in the corporate name of said Company, four hundred and fifty bonds of one thousand dollars each, eighty bonds of five hundred dollars each, and one hundred bonds of one hundred dollars each; bearing date the first day of May, one thousand eight hundred and fifty-two, and payable on the first day of May, one thousand eight hundred and seventy-two, with interest, at the rate of seven per cent. per annum, payable semi-annually, on the first day of May and on the first day of November, in each year; which bonds are convertible into the first preferred eight per cent. stock of said Company at par, at any period prior to the first day of May, 1869, of the effect following, that is to say:—

And the said President and Secretary, to secure the payment of the said bonds, with interest as aforesaid, were also duly authorized to execute a mortgage to the party of the second part, of the whole of the Railroad, from its connexion with the Philadelphia and Columbia Railroad, at or near Downingtown, Chester county, to its terminus near the borough of Norristown Montgomery county; and all the corporate rights, tolls, franchises, and privileges thereto belonging, together with the lands, depots, grounds, locomotive engines, cars, and all other real and personal property, which said Company has acquired, or may hereafter acquire, and the income thereof. And in pursuance of the powers, rights, and privileges aforesaid, and authority of said Company, the President and Secretary, in the corporate name of said Company, have executed four hundred and fifty bonds of one thousand dollars each, numbered consecutively from 1 to 450, and eighty bonds of five hundred dol-

lars each, numbered consecutively from 1 to 80, and one hundred bonds of one hundred dollars each, numbered consecutively from 1 to 100, payable to the party of the second part, or bearer, on the first day of May, one thousand eight hundred and seventy-two, with interest, at the rate of seven per cent. per annum, payable semi-annually, on the first day of May and first day of November, in each year, in the city of New York.

Now this indenture witnesseth, that the said Chester Valley Railroad Company, in consideration of the premises, in order to secure the payment of the said bonds and interest, and in consideration of the sum of one dollar paid by the party of the second part at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, confirmed, assigned, transferred, and conveyed, and by these presents do grant, bargain, sell, release, confirm, assign, transfer, and convey unto the said party of the second part, and their successors in the trust, the whole of their said Railroad, from its connection with the Philadelphia and Columbia Railroad, at or near Downingtown, Chester county, to its terminus, near the borough of Norristown, in Montgomery county, and all the corporate rights, tolls, franchises, and privileges thereto belonging, together with the lands, depots, and depot grounds, locomotive engines, cars, and all other real or personal property, which said Company have acquired, or may hereafter acquire, and the income thereof, in trust for the holders of the bonds hereby secured: *Provided, however*, If the said party of the first part shall and do well and truly pay and discharge, or cause to be paid and discharged,

at maturity, all the aforesaid bonds, and shall and do, in the meantime, well and truly pay the interest thereon as aforesaid, according to the true intent and meaning of said bonds, without any fraud, default or delay, and without any deduction or defalcation, in manner aforesaid, then and from thenceforth as well the said bonds as this mortgage, and the estate, property, and rights hereby granted, shall cease, determine, and become void.

And provided further, That in case the said party of the first part shall fail to pay the principal, or any part thereof, or the interest on said bonds as the same may become due and payable, when demanded according to the tenor thereof, then after sixty days from such default, upon the request of the holder of any such bond or bonds, it shall and may be lawful, at the discretion of the party of the second part, their successor or successors in the trust, to enter into and upon, and take possession of all or any part of said premises hereby granted, and as the attorney in fact, or agent, of the said party of the first part, by himself or agents, or substitute or substitutes duly constituted, have, use, and employ the same, making, from time to time, all such repairs as they may deem necessary, and receiving the tolls, rents, issues, and profits of sail railroad and appurtenances; and after defraying out of the same the counsel fees, and other legal charges and expenses of the railroad machinery thereof, and such repairs as aforesaid, apply the proceeds thereof to the payment of the principal and interest of all such bonds due and unpaid, or the interest which may be due and unpaid.

And it shall and may be lawful for the said party

of the second part, their successor or successors in the trust, at the written request of the holders of any such of the bonds due and unpaid, to cause the said premises and appurtenances, or so much thereof as they shall deem necessary to pay and discharge the principal and interest of all such bonds due as aforesaid, to be sold at auction in the city of New York, or the city of Philadelphia, giving at least forty days' notice of the time and place, and terms of such sale, and of the specific property to be sold, by publishing the same in newspapers of good circulation in the cities of Philadelphia and New York, and in the counties of Chester and Montgomery, Pa., and execute to the purchaser or purchasers thereof a good and sufficient conveyance for the same, with the franchises of the corporation, as fully as they are now held by the said Company, which shall be a bar against the party of the first part, their successors, and assigns, and all persons claiming under them, of all right, interest, or claim in or to said premises, or any part thereof; and the proceeds of such sale, after deducting the costs and expenses thereof, and expenses of this trust, to be applied to the payment of said principal and interest due and unpaid on said bonds, and any balance or residue not required for that purpose shall be restored and paid to the party of the first part And the said party of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the premises, or any part thereof, to the said part of the second part, their successor or successors in the trust, for more fully carrying into effect the objects hereof, particularly for the conveyance of the property acquired

by the said party of the first part subsequently to the date hereof, and comprehended in the description of the premises contained therein.

And it is further mutually agreed, that the said party of the second part, their successor or successors in the trust, shall only be liable and accountable for reasonable diligence in the management thereof. And the said party of the second part, their successor or successors in the trust, shall be entitled to receive proper compensation for every labor and service performed by him or them, in case he or they shall, as herein provided, take possession of the premises, or any part thereof, or manage or sell the same.

And in case of death, or incapacity, or resignation of the said party of the second part, or their successor or successors in the trust, the said bondholders may apply to the Supreme Court of the State of Pennsylvania, sitting in any district in said State, to appoint a new trustee or trustees, to supply his or their place or places, and when appointed by said Court, such new trustee or trustees shall become vested, for the purposes aforesaid, with all the rights and interests hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance for the same, but if the same may be required, both or either of the parties hereto shall execute any necessary releases or conveyances for that purpose.

In witness whereof, the said party of the first part have caused their common or corporate seal to be hereunto affixed, and the same to be subscribed by their President and Secretary ; and the said parties of

the second part have set their hands and seals, the day and year first above written.

WM. E. MORRIS,
President Chester Valley Railroad Co.
W. S. WILSON, *Secretary.*

Signed, sealed, and delivered in
presence of us.
W. R. PATRICK,
GEO. W. STRONG.

We accept the trust and conditions in the above and foregoing indenture of mortgage contained.

SHEPHERD KNAPP, [SEAL.]
A. S. FRASER, [SEAL.]
DANIEL S. MILLER, [SEAL.]

City of Philadelphia, ss.

Be it remembered, that on this the first day of May, Anno Domini one thousand eight hundred and fifty-two, before me, the subscriber, an Alderman in and for the county of Philadelphia, personally came and appeared W. S. Wilson, of the city and county of Philadelphia, Secretary of the "Chester Valley Rail road Company," and on his solemn affirmation, duly administered according to law, declares and says that the seal affixed to the above-written indenture, and attested by William E. Morris as their President, and by this affirmant as their Secretary, is the corporate seal of the said Chester Valley Railroad Company; and the said indenture was duly sealed and delivered by and as and for the act and deed of the said Ches ter Valley Railroad Company, for the uses and pur poses therein mentioned; that the name of this

affirmant thereunto subscribed is of his own proper handwriting, and that he did also see the said William E. Morris subscribe his name as President thereto, in attestation of the due execution and delivery of the aforesaid indenture, and further saith not.

W. S. WILSON, *Secretary.*

Affirmed and subscribed before me, the day and year aforesaid. Witness my hand and seal.

WM. H. BUTLER, *Alderman.* [SEAL.]

Recorded May 7th, A. D. 1852, at 2 o'clock, P. M.

Chester County, ss.

I, Thomas Walter, Recorder of Deeds, &c., in and for said County of Chester, do certify that the within and foregoing instrument of writing, purporting to be a mortgage given by the "Chester Valley Railroad Company" to Shepherd Knapp and others, in trust, is a true copy as the same remains of record in my office, in Mortgage Book I 2, vol. 33, page 44.

In witness whereof, I have hereunto set my hand, and affixed the seal of said office, at West Chester, this eighteenth day of May, A. D. 1852.

THOS. WALTER, *Recorder.*

SHEPHERD KNAPP, et al. *vs.* THE CHESTER VALLEY RAILROAD COMPANY, et al.	C. C. U. S. E. D. of Pennsylvania. April Sessions, 1855. No. 8. In Equity.

The demurrer, plea and answer of The Chester Valley Railroad Company, one of the defendants, to the supplemental bill or bill of review, of Shepherd Knapp, and others complainants.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants bill contained, to be true, in such manner and form as the same are therein set forth and alleged, do demur in law to the said bill, and for cause of demurrer show, that the said complainants have not in and by their said bill made or stated such a case as doth or ought to entitle them to any such relief as is thereby sought and prayed for, from or against these defendants, wherefore they pray to be hence dismissed with their reasonable costs in this behalf sustained. And they assign the following causes of demurrer.

First. That this Court has entered a final decree in the original cause.

Second. That the supplemental bill in the nature of a bill of review sets forth no error in matter of law or otherwise in the said final decree in the original cause, nor any matters of fact newly discovered since the said final decree was entered.

Third. That the said bill of review sets forth no material matter of fact, nor of law, not embraced in the bill filed in the original cause.

Fourth.—That the said bill of review sets forth no matter or cause not heard, considered and finally adjudged in the original cause.

Fifth.—That the said bill of review prays for no relief to effectuate the execution of the said final decree.

Sixth. That the said bill of review was not filed by leave of the Court, upon notice to the defendants, and with the necessary affidavit required by equity practice.

Seventh. That the said bill of review does not state the point or part of the final decree in the original cause, by which the complainants consider themselves aggrieved, or any ground of law or matter since discovered upon which the individual complainants who alone present said bill, prays relief.

Eighth. That the parties sought to be made new parties are not necessary parties, and if they were such, that ground is not sufficient to sustain a bill of review.

And these defendants, by protestation, not confessing or acknowledging all or any matters and things in the said complainants' bill of complaint, mentioned and contained to be true, in such sort, manner and form as the same are therein set forth and alleged for a plea in this behalf, say that heretofore one John Bradley, a holder of one of said bonds, filed his bill of complaint, the docket entries of which said complaint to the period of answers filed, the said complaint having been set down, and heard on bill and answer, are in the following words:

R. C. McMurtrie,

John Bradley, holder of bonds secured by a mortgage dated May 1, 1852, as well for himself as for all others, holders of like bonds, who agreeing to contribute to the expenses of this suit, may become parties hereto,

vs.

C. Gilpin for R. R. Co.
St. G. T. Campbell, for Knapp, Frazer & Miller.

THE CHESTER VALLEY RAILROAD COMPANY, and Shepherd Knapp, Alfred S. Frazer and Daniel S. Miller, Trustees, named in said mortgage.

Bill in equity filed July 11, 1859, and subpœna exit returnable the first Monday of August, 1859. Service accepted.

1859, August 1, rule on defendants to plead answer or demur, on or before the first Monday of September.

September 5. Demurrer and answer of Chester Valley Railroad filed.

" 23. Answer of Knapp, et al. Trustees, filed.

In the Supreme Court sitting in Equity, in and for the Eastern District of Pennsylvania of July Term, 1859, No. 26, against these defendants and the said Trustees, co-defendants, praying relief and an order and decree of the said Court for the same reasons and causes stated in the Supplemental Bill or Bill of Review, requiring and directing the said Trustees to sell the said mortgaged premises, which cause was finally argued on appeal before said Supreme Court, sitting in banc, and it was by the said Court in Banc adjudged and decreed that the said Bill should be

dismissed, to which reference is craved as if here set forth at large, and the opinion of the said Court was prepared, delivered and filed as provided by law a copy of which is hereto annexed, marked Exhibit "A." all of which the defendants crave may be taken as if more fully and formally set forth. Therefore these defendants do plead the said judgment and decree of the said Supreme Court, dismissing the said bill of the said John Bradley, in bar to the said complainant's bill, and pray the judgment of this honorable Court, whether they should be compelled to make any further answer to the said Bill of Review, and pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

These defendants now and at all times hereafter, forever saving and reserving unto themselves, all benefit and advantage of exception, which can or may be had to the many errors, uncertainties and other imperfections in the said complainant's said Bill of Review, contained for answer thereunto or unto so much and such parts thereof, as these defendants are advised is or are material or necessary for them to make answer unto these defendants answering say.

These defendants admit that the said Knapp, Frazer and Miller filed their bill as set forth in said Supplemental Bill or Bill of Review, and that the defendants duly filed their answer in said cause and that a decree has been made in the cause, a copy of which decree is hereto annexed and marked Exhibit "B."(1) which defendants crave may be taken as a part of their answer.

(1) See Ante page 14.

These defendants aver that all interest due on the bonds of the Company, prior to the first of November, 1855, has either been paid or ordered to be paid out of a sufficient fund in Court from the earnings of the road and that they have no funded or floating debt, but the bonds not yet due and the arrearage of interest thereon falling due November 1st, 1855, and semi-annually thereafter.

These defendants further aver that the road can be worked as profitably for all interested by judiciously leasing the same to one or the other of two rival companies connecting therewith as a feeder to such road as in any other way, and they believe that by proper leasing and management, and the natural increase of business, it will pay half the accruing interest immediately, and that the nett receipts will increase considerably every year. The nett receipts from the road, were for 1859, about $13,391 62, and for 1860, about $13,591 62. And there is an unsettled claim on the Reading Railroad, the lessee, which if sustained as the defendants believe it will be, will make the nett annual recepts for each of those years reach $17,500 or upwards.

These defendants deny that there has been such a forfeiture of the legal estate of the defendants under the terms and conditions of the said mortgage by the non-payment of interest as to vest the mortgaged premises, property and franchises in the said Trustees absolutely, and to entitle the said Trustees to have a decree of foreclosure and sale, but to the contrary thereof they aver that by the terms and conditions of said mortgage, the said Trustees on nonpayment of interest in manner therein provided, are only author-

ized to enter into possession of the mortgaged premises, and to receive the tolls, rents, issues and profits, and to apply the same after paying for the necessary repairs and expenses to the payment of the principal and interest of all such bonds due and unpaid, or the interest which may be due and unpaid, and that the power to foreclose and sell, given expressly in said mortgage to said Trustees, is specially limited and confined to the case of non-payment of the bonds at maturity, and cannot be exercised, or in any manner enforced except in palpable violation of the express terms of the contract under said mortgage until such bonds shall be due and unpaid, that is to say not before the first day of May, 1872.

And these defendants further aver that the said Trustees were at the time of filing their Supplemental Bill or Bill of Review, and have ever since been and still continue to be in the possession of the mortgaged premises, and in the receipt of the tolls, rents, issues and profits thereof, under the terms and conditions of said mortgage.

And these defendants submit to your honors that according to the plain terms and conditions of said mortgage, the sale of the mortgaged premises cannot be enforced at the instance of the said Trustees, nor of any bond-holder or holders of any bond in the Supplemental Bill or Bill of Review mentioned, until such bond or bonds shall become due and unpaid, and that it is not consistent with principles of law or equity to nullify or alter the terms of a written contract at the instance or to answer the ends of one party claiming under it, to the damage and ruin of the interests of the other parties to the instrument.

To the several interrogatories propounded by the said complainants in their said Supplemental Bill or Bill of Review, these defendants answering say:

To the first interrogatory. The interest due up to May 1, 1855 inclusive on said bonds, has been paid, or ordered to be paid out of a fund provided and set apart for that purpose, as stated in defendants' answer; the interest falling due November 1st, 1855, and semi-annually thereafter remains unpaid.

To the second interrogatory. The nett earnings of the road which have been paid into court, amount to about $53,107 55.

The defendants have no fund except the earnings aforesaid and about $3,433 28 due and received or to be received by the Trustees from the Reading Railroad Company, and no property except what is enumerated and described in the mortgage.

To the third interrogatory. The road in its present condition, which is good, might be provided with rolling stock and worked profitably, but it can be worked and used as profitably, or more so under a lease judiciously made to one of the two rival Railroad Companies, viz.: The Reading Railroad Company and the Philadelphia, Germantown and Norristown Railroad Company connecting therewith.

To the fourth interrogatory. Defendants have not ever made the attempt to find security to pay the interest on the bonds in full before the time arrives for the payment of the principal, and they cannot therefore, answer this question; they do not therefore, suppose that they are expected or required to express

any opinion or venture on any guess or conjecture on this subject. But the defendants do believe that before the maturity of the bonds the resources of the road arising from increased business and from a new connection with the East Brandywine Railroad, now in progress of construction, will be adequate to the payment of all interest in arrear and accruing on said bonds.

Without this that there is any other matter, cause or thing in the said Supplemental Bill or Bill of Review contained material or necessary for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN F. GILPIN,
President of the Chester Valley R. R. Co.

CHARLES GILPIN,
W. L. HIRST,
Solicitors for Def'ts.

We certify that in our opinion the foregoing demurrer and plea are well founded in point of law.

CHARLES GILPIN,
W. L. HIRST,
Solicitors for Def'ts.

John F. Gilpin, the President of the Chester Valley Railroad Company, defendants, being affirmed saith that the facts set forth in the foregoing answer, so far as they are stated to depend on the knowledge of the defendants, are just and true, and so far as they are stated to depend on the knowledge and information of others, he believes them to be true. And this affirmant further saith that the foregoing demurrer and plea are not interposed for delay, and that the said plea is true in point of fact.

JOHN F. GILPIN.

Affirmed and subscribed
before me, this first day
of Feb., A. D. 1861.

CHAS. F. HEAZLITT,
U. S. C.

EXHIBIT A.

Copy of the opinion of the Supreme Court of Pennsylvania, in the case of Bradley *vs.* The Chester Valley Railroad Company. (Vide 12 Harris, 149.)

WOODWARD, J.—The remedies of a mortgagee against his mortgagor, as existing at common law, and as modified in equity, may be stated briefly as follows:

First. He had a right to take possession of the mortgaged premises and to use and enjoy them as a prudent owner would do, but correlative to this was the right of the mortgagor to compel him to account for the profits, and to restore the possession when the rents and profits of the estate had paid debt, interest and charges.

Second. The right of foreclosure, whereby he acquired an absolute title to the incumbered property. This was by a bill in chancery, praying for the foreclosure of the mortgagor's equity of redemption, on account of non-payment of the debt according to the terms of the contract; but it was subject to many vexatious delays, arising not only from the difficulty of making all proper persons parties, such as heirs, devisees and incumbrancers, but chiefly from the power that Chancery assumed, to enlarge the time for redemption on a bill to foreclose.

After final decree of foreclosure, the mortgagee might sell the estate, and, according to some authorities, if he did this fairly, and it produced less than the mortgage debt, he might still have remedy against the mortgagor's other estate for the balance of the debt. To make sure of this result, the practice has prevailed in several States of the Union, and is not unknown in England, to make the bill for foreclosure conclude with a prayer for the sale of the premises, and such sales, when decreed and made, have all the effect of a strict foreclosure to extinguish the equity of redemption. The price is substituted for the pledged estate, and if it prove insufficient to pay the creditor in full, he may proceed on his bond against the mortgagor for the balance of his debt. This power of Chancery to decree a sale instead of a foreclosure, is now regulated by statute in England. See 15 and 16 Vict. c. 86, s. 48.

Third. A third and very important right of the mortgagee, is to sell the premises in pursuance of an express power given in the mortgage. This power is common in the English mortgage, but has been unknown in Pennsylvania mortgages until within the last few years, and since corporation mortgages have become a common mode of creating marketable securities for raising loans. It being a power annexed to the estate and coupled with an interest, it is necessarily irrevocable. It becomes part of the mortgage security, and vests in any person who, by assignment or otherwise, becomes entitled to the money secured to be paid. It relieves the mortgagee of the troubles and delays which are liable to attend foreclosure by

bill in equity. It is to be strictly pursued in all essential particulars, and when it is, the sale that is made in pursuance of it is virtually a foreclosure of the mortgagee's equity of redemption, for he created the power expressly to confer on the purchaser a perfect title to the whole estate, and thus to secure to himself the benefit of an outside price.

Such are the recognized legal remedies of mortgages where the common law and chancery jurisdiction have not been restrained and regulated by statute. But we have grown unfamiliar with them, chiefly because we have never had a distinct chancery tribunal, and because our old Act of 1705 prescribed an easy and satisfactory course for foreclosing the equity of redemption, and bringing the mortgaged estate to a fair public sale.

But the *scire facias* given by that statute does not lie until a year after the last instalment of the mortgage debt falls due, and hence the courts have felt obliged to give liberal construction to the remedies of the creditor on his bond for non-payment of interest and instalments of the principal debt.

It is manifest, however, that neither the remedy under the statute, nor under the bond accompanying the mortgage, are adapted to the large securities which corporations are in the habit of creating for loans which are to be negotiated in the money markets of the country. They postpone the payment of the principal debt much beyond the ordinary race of debts. Their draft upon the future is seldom less than twenty years, and if a capitalist were told that his only remedy on such a mortgage would be the privilege of issuing a *scire facias* twenty-one years after

date, he would not be very likely to give the corporation the use of his money.

Or, if he should be pointed to our judicial decisions, which enable a mortgagee to sue his bond for unpaid interest, and to sell the mortgaged premises, with the same effect as a sale upon *scire facias* under the statute, he would reflect that a great number of bonds similar to his own were issued, or were to be issued; that they were broadcast over the land; that any one of the holders would have the same right as himself to proceed to sell the mortgaged premises—and that before he could know of such a proceeding, his entire security might be swept beyond his reach. This view of his remedies would not be likely to prove much more satisfactory than the other.

The borrowing corporation understand this. They know money cannot be obtained on securities whose legal remedies are so remote, precarious and unsatisfactory. They judge rightly, that a mortgage is a mere contract, and when devising a security to win public confidence, they remember that the more facilities it affords for redress of possible breaches, the more will it commend itself to public favor. Accordingly, instead of leaving their prospective creditors to the remedies of our common Pennsylvania mortgage, they always stipulate that the trustees shall have power to enter for breach of any condition, and exercise the corporate franchise for the benefit of creditors, or, shall have power to sell the premises after due notice, or to declare the principal debt over due, and to proceed by *scire facias* to foreclose the mortgage.

The mortgage before us is fashioned upon this

model. It provides, that if the company shall fail to pay principal or interest of their debt, the trustees may take possession of the road, receive the tolls, rents, issues and profits, and after defraying necessary charges and expenses, apply the balance to the principal and interest of all bonds unpaid. Moreover, after the principal debt of the bonds falls due, the trustees may, on request of bondholders, cause the premises to be sold at auction, after specified notices.

This is a bill on behalf of one of the bondholders, to compel the trustees to sell under the mortgage. The plaintiff is admitted to be a lawful holder of one or more bonds secured by the mortgage, and the failure to pay interest since May, 1854, and the insolvency of the company are also admitted. No part of the principal debt is due or will fall due before the 1st of May, 1872.

The breach complained of is non-payment of interest. The stipulated remedy for that is possession of the road and receipt of the profits. No power of sale is conferred for such a cause. If it were, the trustees might execute it without our help, as we decided in the case of Ashurst *vs.* The Montour Iron Co.; if it were, we would compel the trustees to execute it upon a proper showing, but as no such power is conferred by the instrument, the only question is, whether we can confer it. The parties have made their contract in their own way—have anticipated the very contingency which has happened, and have provided for it by a remedy which they deemed adequate and fair.

Now it is our appropriate duty to hold them to their bargain, but it is not our duty, nor have we

power, to interpolate a new condition; and to say what they did not say, that a sale shall take place because interest was not paid.

If we possess any such power, it must be found in the Acts of Assembly, enlarging our chancery powers, but it was shown in the Montour case that no power to decree a sale for breach of mortgage conditions, had been conferred upon us by that legislation. This mortgage, like all of its sort, establishes the double relation of mortgagor and mortgagee, and of trustee and *cestui que trust*. We declined in the Montour case, to exercise jurisdiction at the suit of the mortgagee against the mortgagor, because as between them there was no trust, and over them, as mortgagor and mortgagee, the Legislature had given us no chancery powers. But we said we would take jurisdiction at the suit of a *cestui que trust* to compel the trustee to execute the trusts of the mortgage. We repeat it here.

Jurisdiction of the trusts of the mortgage is clearly conferred by the Acts of Assembly, and it is to be exercised in proper cases by holding the trustees to the faithful discharge of the powers which have been lodged with them for the benefit of the creditors. It is not an inherent and essential power of this court, to be exercised according to an undefined discretion, but is a statutory power to be exercised in aid of the express purposes and objects of the contract of the parties.

On this subject of the equity jurisdiction of this court, I take leave to add a few words, not necessary, perhaps, to the decision of the case before us, but

essential to correct misapprehensions of the professional mind.

Certain equity powers have always been exercised under the common law forms that have prevailed in our courts, and certain other specific equity powers were long since conferred by the Constitution, the Orphans' Court statutes and other legislation—powers to be exercised by common law judges, but in the forms of equity proceedings.

In 1836 more of this class of powers were conferred, and subsequent grants have enlarged them until we have come to possess nearly all the jurisdiction which Courts of Chancery exercise under the principal heads of equity. These grants, did not, however, embrace the subject of mortgages, as was shown in the case of Ashurst *vs.* Montour Co. The codifiers were not ignorant that bills in chancery for foreclosure and sale of the equities of redemption of mortgagors were common in England and the surrounding States, but they did not deem it best to recommend such an equity practice in Pennsylvania, and it was not done.

For my own part, I have never considered it wise, or according to the traditions of our fathers, to amplify our equity jurisdiction by judicial construction. What is plainly conferred must be exercised—what is not is best let alone. Accordingly, when the case of Mendenhall *vs.* The West Chester Railroad Co. came into this Court, I stood with Judge Knox, opposed to decreeing a sale. If the opinions of my excellent brethren—that of Judge Lowrie of Nisi Prius, and Judge Lewis in banc—had at any time the sanction of a majority of the Bench, it is still true that, before

the case was finally disposed of, a re-argument was ordered, and before that was had, the case was settled. These opinions, therefore, whilst entitled to great consideration, can scarcely be regarded as authoritative decisions even of that case.

Neither of them attempt to deduce the power of this court to decree a sale of mortgaged premises from the Acts of Assembly, but they go upon the general equity doctrine, and assume that we have all the powers of Courts of Equity elsewhere. I could not assent to that assumption. Jurisdiction claimed on that general ground, would have comprehended the ordinary mortgage between individuals, as well as the mere artificial securities which corporations issue, and thus we should have substituted for our simple and excellent old remedy by *scire facias*, a chancery practice, in mortgage cases, that has been found intolerable wherever it has been long tried.

But there was another difficulty in my mind. The mortgage there contained no power to sell for breach of condition in not paying interest—the power of sale being dependant, in that case, as in this, on the non-payment of the bonds—but there was there, as here, a stipulation that for default of payment of principal or interest, the trustees should have power to enter and take possession of the road, and work it for the benefit of creditors.

It seemed to me, that parties who had thus plainly defined their relations, rights and liabilities, ought to be held to the remedy they had agreed on for the breach which had occurred. I was disposed to hold them to their bargain in every particular. I would have assisted the trustees to the possession. At the

suit of a creditor, I would have compelled them to assume the possession, or resign their trust. But neither in the instrument itself, nor in the Acts of Assembly that measure out our chancery powers, could I find our right to decree a sale.

The difficulties which were felt by two judges in that case, are shared by a majority now, and therefore a sale is not to be decreed in this case.

It is material to observe that in all cases where a sale is decreed in pursuance of a power contained in the mortgage, it results from that power rather than from the equity powers of this Court. We compel trustees, in proper cases, to exercise the power lodged with them by the mortgagor, but the power exercised is that of the mortgagor, not ours.

With this distinction borne in mind it will be readily understood how, whilst disclaiming the general chancery jurisdiction to decree a foreclosure, or sale of the equity of redemption, we nevertheless take jurisdiction of the trusts created in the mortgage, and compel trustees to execute whatever trusts have been vested in them for the benefit of creditors, even to the sale of the mortgaged premises.

The sum of the whole matter is:—First, That we recognize the power of sale for breach of any condition of a mortgage as a legitimate part of the instrument, and it is to be executed according to the terms of the appointment.

Second—If the mortgage create a trust, and provide that the power of sale is to be executed by the trustee in certain contingencies, he may be controlled, restrained and directed by a Court of Equity, at the suit of a party standing in the relation of a *cestui que*

trust; the rule for his guidance being derived from the instrument itself.

Third.—But where there is no trust to be administered as the immediate object of the suit, or the contingency has not happened which was to bring it into exercise, Courts of Equity have no jurisdiction in Pennsylvania over mortgages. Mortgages are left to their common law and statutory remedies.

As these views result in an affirmance of the decree dismissing the plaintiff's bill, it is not necessary to consider the other grounds urged.

The decree is affirmed.

EXHIBIT B.

That the mortgage in the bill mentioned is a valid lien and charge upon the road and property of the Corporation defendants, therein mentioned and referred to and upon the franchises thereof. That default has been made in the payment of the interest due upon the bonds secured by the said mortgage as in the bill is charged. That the trustees' complainants are of right entitled to enter upon and take possession of the railroad and property in the said mortgage mentioned, and to take the same into their custody and keeping and control, and are entitled to take, receive and hold upon and for the purposes of the trust in the said mortgage declared, all the rents, tolls, income or profits thereof, whatsoever, from all persons in any manner using the same, whether by contract, release or otherwise, and to use and apply

the same in accordance with the terms by the said mortgage declared.

That a writ by special injunction do issue against the defendants their agents and servants restraining them and each of them from interfering or intermeddling in any manner whatsoever, with the said premises in the said mortgage mentioned or with the rents, issues or profits thereof, or with their use, control, and management thereof or with the receipts of the rents, issues or profits thereof by the complainants' trustees as aforesaid.

This decree is made without prejudice to any question as to the rights of the complainants or any other party to have the said mortgage foreclosed or a sale had under the same until the maturity of the bonds in the said mortgage mentioned with liberty to either party to apply from time to time for further orders and instructions.

KNAPP *vs.* THE CHESTER VALLEY R. R. CO	Circuit Court United States, Eastern District of Penna., April Sessions, 1855. No. 8. In Equity.

The separate answer of The Philadelphia and Reading Railroad Company, defendants, answering to the supplemental or amended bill, in the nature of a bill of review, filed in this cause.

These respondents, without waiver of any exceptions to said bill either as to the form or substance thereof, answering the same, or so much thereof as they have been advised it is in any wise material for them to answer, say:

That they have no knowledge as to the nature of the proceedings heretofore had in this cause, nor what rights have accrued to the complainants, trustees thereunder, except so far as they have been informed thereof by the said supplemental bill and by a copy of the decree made by this Court in this cause on the 25th day of October, A. D. 1860, a copy of which has been served upon them. That (otherwise than as aforesaid) they have no knowledge as to what instalments of interest on the bonds in the said supplemental bill mentioned have become due, nor what amount of interest was due on the first day of November, A. D. 1860; but these respondents believe the truth in respect thereto to be as in the bill alleged.

That these respondents have no knowledge (other than such as is derived from said bill) as to what were the total earnings or receipts of said railroad of

the defendants during the entire period mentioned in the said bill, nor what amount thereof became applicable to the payment of said interest.

That these respondents (by an agreement executed by them and the Chester Valley Railroad Company, defendants, dated on the 17th day of December, A. D. 1858) became and were authorized to run and use the railroad of said Chester Valley Railroad Company, and have continued and yet continue to run and use the same under the said agreement until the present time, a copy of which agreement is hereto annexed marked "A."

And these respondents further answering, say, that during the time they have so continued to run and use said railroad, and until the time of their making this answer, they have paid various sums of money which have become due by them under said agreement; that all sums which became so payable, prior to the making of the said order and decree of this Court of the 25th day of October, A. D. 1860, were paid over to the said Chester Valley Railroad Company, and all sums which have since become payable have, in conformity with said decree, been deposited with the Pennsylvania Company for insurances on lives and granting annuities to the credit of said trustees, complainants. These respondents annex hereto, as part of this answer (marked "B."), a statement showing the dates respectively of such payments and deposits and the amounts respectively so deposited.

That these respondents believe it to be true that, during the time they have so run and used the said railroad under the agreement aforesaid, the several sums so paid and deposited by them and set forth in said

annexed statement comprised the total earnings and receipts from said road to the said The Chester Valley Railroad Company, defendants, and to said trustees.

That these respondents believe it to be true that the said corporation, defendants, owners of the road, have no other funds or property than the mortgage property and franchises, and that they are without credit and are insolvent, and that they have no rolling stock or means to procure it to work the road.

And for the residue of their answers these respondents refer to their replies to the interrogatories in said bill contained, viz.:

To the First Interrogatory, they answer: That they have no knowledge as to the matters therein inquired of.

To the Second Interrogatory, they answer: That they have no knowledge as to the matters therein inquired of, except as hereinbefore stated.

To the Third Interrogatory, they answer: That they have no knowledge of the means of the said Chester Valley Railroad Company, except as hereinbefore stated.

To the Fourth Interrogatory, they answer: That they have no knowledge as to the matters therein inquired of.

And these respondents pray to be hence dismissed with their reasonable costs and charges.

A. WHITNEY, *Prest.* [SEAL.]

Attest, W. H. McILHENNY, *Sec'y.*

A.

This Agreement, made the seventeenth day of December, A. D. 1858, between the Chester Valley Railroad Company of the one part, and the Philadelphia and Reading Railroad Company of the one part, Witnesseth that the said parties have mutually covenanted and agreed as follows, viz: The party of the second part agrees to furnish the necessary cars and engines, and to do all the business offering on the said Chester Valley Railroad, and to keep the road in good order and condition. To run at least two trains a day each way from Philadelphia and Downingtown, for the accommodation of passengers and freight connecting with the Philadelphia and Reading Railroad, and without change of cars, so that the communication from Downingtown to Philadelphia and back shall be regular and prompt and without delay, and so that one passenger train per day shall be run from and to the places above named in a space of time not exceeding two hours and a quarter of an hour for each trip, all unavoidable delays incident to running railroad cars excepted. It is also agreed that the party of the second part shall and will keep a book or books containing an account of all business done and moneys received, to a part or share of which the Chester Valley Railroad Company may under the terms of this agreement, be entitled, said books at all times to be opened to the said inspection of the President and Treasurer, or Secretary of the Chester Valley Railroad Company. The President and Directors of the Chester Valley Railroad Company, can and

may at any time, if they should deem it expedient, appoint an agent to accompany each and every train of cars over any part of the Chester Valley Railroad, and the Philadelphia and Reading Railroad Company, shall at all times permit said agent to remain on and pass through each train and trains of cars at any and all places between Norristown and Downingtown, and give him every facility in determining the amount of fare and freight collected from passengers and transporters over the Chester Valley Railroad or any part thereof; the appointment of such agent, if made shall not, however, release the said The Philadelphia and Reading Railroad Company from the obligation of keeping an exact account of all monies to a share of which the Chester Valley Railroad Company may under this agreement, be entitled, nor shall the report of such agent be binding or conclusive on The Philadelphia and Reading Railroad Company. The time of starting the trains from Philadelphia and Downington, shall be fixed by the party of the second part, so as to connect with the trains of The Philadelphia and Reading Railroad, subject to the approval of The President and Directors of the Chester Valley Railroad Company. The party of the second part are to give The Chester Valley Railroad Company access at all times to their books and accounts concerning receipts under the lease; and the party of the second part are to make monthly returns and settlements to and with The Chester Valley Railroad Company on the fifteenth day of each month. Damages for casualties to persons or property of any and every kind, are to be borne and paid by the party of the second part. The repairs of the road to be done by the party

of the second part, shall include everything necessary to keep up the permanent way in good condition for running passenger and freight trains thereon, and to keep all buildings used by the party of the second part for the purpose of running the road, and for the accommodation of freight and passengers, in good repair and condition. All accidents to the road from flood or fire are to be renewed at the cost of the party of the first part, and all new sidlings, depots or extensions, shall be made only on such terms and in such a manner as shall hereafter be expressly agreed on by and between the said two companies. The rates of charge on freight and passengers are to be fixed by the party of the seeond part, subject to the approval of The President and Directors of the party of the first part. An exact account of the monies received for business on The Chester Valley Railroad by The Philadelphia and Reading railroad Company is to be kept by that company, and the said company is to appoint its own agents, collect all freights and charges and control the working arrangements of The Chester Valley Railroad as fully as it does those of its own road, and it is understood that the terms working and repairing herein employed, include running expenses, cost of maintaining buildings, road-ways, bridges, the renewal of ties, and of iron, the repair of all buildings already constructed and used by the party of the second part, and all other costs and charges incident to the working of a railroad except extensions thereof. When passengers and freight pass partly over both roads the portion of the receipts due to the party of the first part shall be in proportion to the distance passed over their roads, except

where special charges can be made in favor of that road, and these must be prearranged, otherwise the proportional charge will be made. And it is also understood and agreed that no sum shall be credited to either road less than ten cents for each passenger, or ten cents per ton for each ton of freight coming from or originating on either road. And it is further understood that in all computations or charges where a fractional amount exceeds one half cent, it shall be computed and considered as one cent. The party of the second part agree that the party of the first part shall receive the following pro-ration of the gross receipts in each year, viz.:

$\frac{40}{100}$ on a business of $30,000 per annum.
$\frac{42}{100}$ on a business of 40,000 per annum.
$\frac{44}{100}$ on a business of 50,000 per annum.
$\frac{46}{100}$ on a business of 60,000 per annum.
$\frac{48}{100}$ on a business of 70,000 per annum.
$\frac{50}{100}$ on a business of 80,000 per annum.

And that the party of the second part further agrees and guarantees that the cost of working the road shall not exceed the cost of sixty cents per mile run, and that when it is needful to run more than twelve trains each way per week, the distance run shall not be more than three miles for every four dollars of gross earnings, and if in any one year the result of this arrangement or guaranty shall be considered by the party of the first part more beneficial to them than the per centage of gross receipts above specified, the said party of the first part shall have the right to claim the benefit of the said last mentioned arrangement or guaranty. This arrangement shall remain in force for five years from the thirty-first day of December, A. D. 1858, and if at the end of that period the party

of the second part shall offer to renew the same on terms as favorable as those which may be offered by any other company or person, or as those on which the party of the first part may itself be able to do the business of the road, then it shall be extended for ten years from the date of the present agreement. This agreement is now made, but as the subsisting contract does not expire until the 31st day of December, A. D. 1858, and as time is required to prepare for carrying it into effect, the performance of the duties hereby imposed shall commence on the 31st day of December, A. D, 1858, on which day said subsisting contract between the party of the first part and The Philadelphia, Germantown and Norristown Railroad Company will expire.

In witness whereof, the said The Chester Valley Railroad Company and the said The Philadelphia and Reading Railroad Company have caused their respective common or corporate seals to be hereunto affixed and the said seals to be respectively duly attested, and have also caused the signature of their respective Presidents to be hereunto affixed the day and year first hereinbefore written.

(Signed) BENJAMIN RUSH,
President of the Chester Valley Railroad Co. [SEAL.]

Attest,
(Signed) CHAS. O'NEILL,
Sec'y Chester Valley R. R. Co.

(Signed) R. D. CULLEN,
President of the Philadelphia and Reading R. R. Co. [SEAL.]

Attest,
(Signed) W. H. McILHENNEY,
Sec'y P. & R. R, R. Co.

Sealed and delivered in the presence of us,

The word "to" on eighth line from foot of first page erased with the pen before signing, and the word "and" written on the same line in place of said word "to" before signing.

(Signed) C. Auge,
Nath. Strong.

Statement of payments made by The Philadelphia and Reading Railroad Company to the Chester Valley Railroad Company under the lease dated December 17th, 1858.

1859.		
April 11,	To cash,	$1,641 12
" 19,	"	1,037 33
May 18,	"	1,131 62
June 29,	"	1,244 02
July 18,	"	1,159 38
Aug. 18,	"	893 10
Sep. 19,	"	1,232 77
Oct. 18.	"	1,147 48
Nov. 18,	"	1,347 51
Dec. 20,	"	1,330 90
1860.		
Jan. 21,	"	1,217 39
April 19,	"	2,686 46
May 18,	"	1,250 84
June 18,	"	1,053 86
July 18,	"	1,115 73

Aug. 18,	To cash,	$970 05
Sept. 18,	"	1,242 23
Oct. 18,	"	1,189 17
		$22,899 96

Statement of payments made by The Philadelphia and Reading Railroad Company to the Trustees of the bond-holders of the Chester Valley Railroad Company under the lease dated December 17, 1858.

1860.		
Nov. 10,	To cash,	$1,326 51
Dec. 14,	"	1,219 21
1861.		
Jan. 15,		887 56
		$3,433 28